



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)

Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

AUG 24 2010

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

952663-325966

Thereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]
on August 19, 2010

Signature

Typed or printed Rebecca H. Pegg
name _____

Application Number

10/701,085

Filed

November 4, 2003

First Named Inventor

Michael Blane Dabney

Art Unit

3623

Examiner

Folashade Anderson

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

 attorney or agent of record. Registration number 45,031

Signature

W. Kevin Ransom

Typed or printed name

704-331-3549

Telephone number

 attorney or agent acting under 37 CFR 1.34.

August 19, 2010

Registration number if acting under 37 CFR 1.34 _____

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

 *Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

No.: 10/701,085 Confirmation No.: 4427
Applicant(s): Dabney, et al.
Filed: November 4, 2003
Art Unit: 3623
Examiner: Folashade Anderson
Title: CONSUMER FEEDBACK IN CONTENT MANAGEMENT SYSTEMS

Docket No.: 952663-325966

Customer No.: 24239

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully submit that a technical legal error has been made during examination of the application, which has resulted in an improper rejection of the claims. Applicants submit that but for this technical legal error, the claims would be considered patentable in light of the references cited. Specifically, Applicants submit that a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established due to the formation of incorrect assumptions regarding the cited prior art. Applicants therefore request either reconsideration of the pending obviousness rejection and allowance of the claims, or at a minimum, that the final rejection be lifted and the case be returned for further examination.

In the Final Office Action dated February 19, 2010, the claims are alleged to be unpatentable as obvious over a combination of website information from IslandData.com, U.S. Patent No. 5,895,450 to Sloo and U.S. Published Patent Application No. 2002/0188688 to Bice. The Office Action specifically argues that the customer service system referred to as Express Response tool of the *IslandData* system equates to the content management system of the claims. It further argues that newsgroups from which the Express Response tool receives feedback inherently includes published content. The Office Action further argues that the *IslandData* system suggests analyzing messages from users to determine if the messages includes comments regarding content, and then routes such messages to an electronic content management system. (See Office Action, pages 6 and 7). For

some reason, the Office Action alleges that the *IslandData* system does not disclose storing feedback in a database and therefore cites *Sloo*.

It is apparent from the rejection that the *IslandData* reference has been misconstrued. Further, if *IslandData* is properly construed, it will be seen that *IslandData* at best describes a system that the claimed invention expressly seeks to replace with a more robust feedback system.

In particular, the *IslandData* system expressly treats consumer queries different from consumer feedback.¹ The Office Action points to the sections of *IslandData* that relate to treatment of consumer queries and attempts to equate those procedures with consumer feedback. However, the Office Action fails to note that *IslandData* expressly categorizes consumer queries and consumer feedback as different items and treats them differently in the system. The sections of *IslandData* cited by the Office Action only deal with consumer queries not consumer feedback. The Express Response portion of the *IslandData* system receives customer queries and attempts to answer such questions via a frequently asked questions (FAQ) database. If the answer to the customer query is not in the FAQ database, then the customer query is forwarded to a call center for processing.

Consumer feedback is handled differently from consumer queries in the *IslandData* system. Consumer feedback is routed to a Knowledge Management system and stored in a database.² The Knowledge Management system aggregates customer feedback information, identifies knowledge deficiencies in the system, provides knowledge engineers with high level reporting and trend analysis information.³ As such, the arguments in the Office Action should have focused on the Knowledge Management system of *IslandData* and not the Express Response system.

¹ Applicants would expressly disagree with any attempt to argue that consumer queries and consumer feedback are one and the same in *IslandData*. *IslandData* only refers to consumer queries when discussing comparison to a FAQ database and escalation to a call center. Applicants would also disagree with an argument that the consumer feedback in *IslandData* is extracted from consumer queries. There is no such disclosure. For all that is known, consumer queries could very well be sent in one on-line form by the user in the *IslandData* system, and consumer feedback could very well be sent in a different on-line form by the user, and the system of *IslandData* sends queries to the Express Response tool and feedback to the Knowledge Management tool.

² This point indicates that the arguments in the Office Action may not have appreciated this section of the *IslandData* reference. The Office Action states that *IslandData* does not disclose storing feedback in a database, but the Knowledge Management section of the reference states that it is.

³ *IslandData* states that knowledge deficiencies and high level reports and analysis are sent to knowledge engineers, but nowhere states that individual feedback is provided.

The disclosed Knowledge Management system of *IslandData*, as would likely be interpreted by the Office Action,⁴ discloses a system that the claimed invention expressly is meant to replace. Specifically, in the background section of the instant application, Applicants state in paragraphs 0004-0006:

[0004] *In traditional electronic content management systems, the consumer feedback component (to the extent there is one) is isolated and separate from the production and publishing components of the system. As a result, there is often a disconnect between what the consumer would like to see or cares about and the content that is published.* For example, consumer feedback regarding the articles in the “Sports” section of an on-line publication may never be seen (or at least not in a timely manner) by the managing editor of that section. The disconnect is usually not critical for non-information currency based industries because consumer feedback is not integral to the day-to-day sales or distribution of the product. Instead, it simply serves to shape the long term, future development and marketing strategies for the product. For industries that are based on information currency, however, the valuable life of the content, and hence the time it can be used to capture the consumer's attention, is very brief. Consumer feedback, therefore, is an integral part of the daily sales and distribution of the content in these industries.

[0005] Moreover, traditional electronic content management systems are designed under the premise that consumer response may be gauged using standard mass audience analysis techniques. These techniques rely on anonymous surveys and focus groups composed of randomly selected consumers who are statistically representative of the whole. While such techniques are generally applicable for homogeneous or relatively homogeneous audiences, they do not account for the extraordinary impact that certain statistical outliers often have on consumer consumption. For example, it has been found that consumption patterns in information currency based industries are often driven by a very small group (5-10%) of consumers who consume well over 50% of the product. These consumers are often the ones who take the time and effort to provide feedback. Standard mass audience analysis techniques, however, tend to dilute the impact of these consumers by averaging their consumption pattern with the consumption pattern of the rest (90-95%) of the consumers.

[0006] Accordingly, what is needed is an electronic content management system that is capable of closing the disconnect between consumer feedback and the product that is published. . . .

Thus, the *IslandData* system is what the claimed invention seeks to replace. The *IslandData* system receives consumer feedback, stores it in a database, and performs

⁴ As will be discussed later, Applicants do not agree with the argument that *IslandData* discloses a content management system or a system that receives and determines that a feedback message includes comments regarding published content as recited in the claims of the instant application.

statistical analysis of the aggregate data. Such analysis is then used to fill knowledge gaps and provide reports to knowledge engineers. There is no disclosure in *IslandData* of a system that determines that information in a feedback message includes comments regarding published content and routes the comments to a content management system, as is recited in the claimed invention.

In addition to the above, Applicants respectfully disagree that a customer service application equates to the recited content management system. In the specification, the content management system is expressly defined as systems that manage the production and publication of magazines, on-line journals, and other types of publications. (See Specification, paragraph 0003). Applicants fail to see how a customer service application would equate with such a system.⁵

Applicants further specifically disagree with the Office Action that *IslandData* discloses receiving feedback regarding published content. While *IslandData* does disclose receiving consumer queries from newsgroups, it does not state that it receives feedback from such groups (remembering that *IslandData* discloses consumer queries as a different category from consumer feedback). Further, reviewing various definitions for the term “newsgroup” at www.dictionary.com, it is not abundantly clear that newsgroups inherently encompass published content (e.g., “a forum where subscribers exchange information about a specific subject by electronic mail.”). (See <http://dictionary.reference.com/browse/newsgroup>).

Further, Applicants disagree with the Office Action’s contention that *IslandData*’s disclosed “analyzing customer queries with natural language processing techniques” equates to the claimed recitation of determining that information from a feedback message includes comments regarding published content. There is no basis whatsoever for the argument that use of natural language processing techniques somehow determines that a feedback message includes comments regarding published content. This is simply adding disclosure to *IslandData* that is not there either directly or indirectly.

At best, the system disclosed in *IslandData* includes an Express Response system for attempting to answer customer queries either through a FAQ database or direction to a call center. Feedback is handled by a separate Knowledge Management system that stores feedback and runs statistical and trend analysis on same for reporting purposes. There is no disclosure in *IslandData* of

⁵ Note Applicants’ argument later below regarding the Office Action’s “newsgroups” characterization.

Appl. No.: 10/701,085
Applicant(s): Dabney, et al.
Filed: November 4, 2003
Page 5 of 5

a system that identifies comments in feedback that is related to published content and routes such comments to a content management system to close a loop between a consumer and the content manager as is claimed in the instant case. The Office Action's construction of the *IslandData* system to cover the claimed invention appears to constitute impermissible use of hindsight to reconstruct the system of *IslandData* into something other than what is disclosed regarding the *IslandData* system.

In light of the above, Applicants respectfully submit that a technical legal error has been made in interpreting the cited prior art in light of the claims, which has resulted in a failure to establish a *prima facie* case of obviousness against the claims. Contrary to the Office Action's rejections, Applicants respectfully submit that all of the pending claims of the application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued, or at a minimum that the final rejection be lifted and the case be returned for examination with instructions to give the claim language proper weight.

Respectfully submitted,



W. Kevin Ransom
Registration No. 45,031

Customer No. 24239
Moore & Van Allen PLLC
Post Office Box 13706
430 Davis Drive, Suite 500
Research Triangle Park, North Carolina 27709
Phone: (704) 331-3549
Fax: (704) 339-5800

"First Class Mail"
Date of Deposit August 19, 2010

I hereby certify that this paper or fee is being deposited with the United States Postal Service "First Class Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:
Commissioner for Patents, Mail Stop – AF P.O. Box 1450, Alexandria, VA 22313-1450

